

• See Attached

13  
7/24/01  
SA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**FILED**  
**HARRISBURG, PA**

JUL 24 2001

**MARY E. D'ANDREA, CLERK**  
Per \_\_\_\_\_

Before the Court is Plaintiff's motion to remand. The motion has been fully briefed and is ripe for disposition. For the reasons set forth below, Plaintiff's motion to remand will be denied.

## I. Background

Plaintiff filed a complaint in the Court of Common Pleas of Dauphin County on January 9, 2001, alleging federal and state discrimination claims against the Pennsylvania Board of Probation and Parole and a number of its employees in their individual and professional capacities. The complaint was served on January 16, 2001, and on February 12, 2001, counsel for Defendants filed a notice of removal action based upon federal question jurisdiction pursuant to Plaintiff's federal claims and supplemental jurisdiction over her state law claims emerging from the same facts. Plaintiff filed her timely motion for remand on March 2, 2001.

## II. Discussion

Plaintiff's arguments for remand rest upon the propriety of Defendant's reservation, in its removal petition to this Court, of its right to assert Eleventh Amendment immunity. As the U.S.

Supreme Court in Wisconsin Dep't Corr. v. Schacht, 524 U.S. 381 (1998) ruled, the presence of claims against which Defendants may assert Eleventh Amendment immunity does not destroy removal jurisdiction. Id. at 2052. Since this Court would have had original jurisdiction to hear this case had Plaintiff originally filed it here, Defendants may remove it here. Id. at 2053. Whether by choosing to defend in this Court Defendants waived their Eleventh Amendment rights is a question that will not arise unless and until Defendants attempt to assert such immunity.

### III. Order

**AND NOW**, for the reasons discussed above, **IT IS ORDERED THAT**:

Plaintiff's motion for remand (Doc. No. 4) is **Denied**.



Yvette Kane  
United States District Judge

Dated: July 23<sup>rd</sup>, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

July 24, 2001

Re: 1:01-cv-00270 Harris v. Pennsylvania Board o

True and correct copies of the attached were mailed by the clerk  
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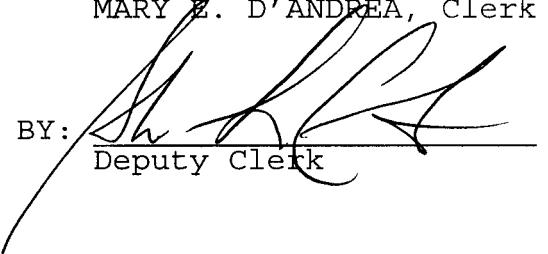
CC:  
Judge   Pro Se Law Clerk  
Magistrate Judge   INS  
U.S. Marshal   Jury Clerk  
Probation   
U.S. Attorney   
Atty. for Deft.   
Defendant   
Warden   
Bureau of Prisons   
Ct Reporter   
Ctroom Deputy   
Orig-Security

Federal Public Defender ( )  
Summons Issued ( ) with N/C attached to complt. and served by:  
U.S. Marshal ( ) Pltf's Attorney ( )  
Standard Order 93-5 ( )  
Order to Show Cause ( ) with Petition attached & mailed certified mail  
to: US Atty Gen ( ) PA Atty Gen ( )  
DA of County ( ) Respondents ( )  
Bankruptcy Court ( )  
Other \_\_\_\_\_ ( )

MARY E. D'ANDREA, Clerk

DATE: 7/24/01

BY:

  
Deputy Clerk